IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8622 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHD. SABBIR MOHD. SIDDIK SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8622 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 5-7-2002, by which he is detained as a "bootlegger" under the Prevention of Antisocial Activities Act, (for short "PASA"). Along with the order of detention he is also served with the grounds of detention of the same date. In the said grounds, there is a reference about one prohibition case pending against the petitioner, which is filed under Sec. 66 (1) b, 65-e,a and 67-a read with section 116 (b) of the Bombay Prohibition Act. On the basis of the said cases and on the basis of some statement of witnesses, he is detained under preventive detention.

2) At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that though the last incident was registered against the petitioner on 26-5-2002, being C.R.No.302/02, the detention order was passed on 5-7-2002. It is submitted that if the activities of the petitioner were really such which were required to be prevented forthwith, it was not necessary to wait for such a long time. It is submitted that there is a delay of about 45 days in passing the order of detention from the so-called incident. This point is taken in the petition at page 10 in ground 4(o). In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21.In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the

Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) This averment is not specifically denied by filing reply by the respondents. Mr.V.M.Pancholi, learned AGP has tried to explain the same orally. By looking to the file, he has stated that the statements were recorded on 4-6-2002 and the same were verified on 26-6-2002 and thereafter, the detention order is passed. However, it is not possible to accept this argument. In this view of the matter and considering the judgement referred above this petition is required to be allowed.

4) Accordingly this petition is allowed. The order of detention dated 5-7-2002 is quashed and set aside. The detenu, Mohd.Sabbir Mohd.Siddik Sheikh is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)
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